SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOHN A. PARKINS, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Re: Johnson Controls v. Sheila Evans
C.A. No. 08A-09-006 JAP

Submitted: April 22, 2009
Decided: May 13, 2009

On Appeal from a Decision of the Industrial Accident Board
AFFIRMED.

Dear Counsel:

Before the Court is the appeal of Johnson Controls from a decision of the Industrial Accident Board (the "Board"),[1] which granted Sheila Evans'

[1] This case was decided by a Hearing Officer in place of the Board. Pursuant to 19 *Del. C.* § 2301B(a)(4) the Hearing Officer sits with the full authority of the Industrial Accident Board. For purposes of this opinion, the Hearing Officer will be referred to as the "Board."

petition for compensation. Because the Board's decision is supported by substantial evidence and free from legal error, the decision of the Board is **AFFIRMED**.

I. FACTUAL AND PROCEDURAL HISTORY

Ms. Evans began working at Johnson Controls as a laborer in June 1990. During her employment at Johnson Controls, Ms. Evans primarily worked as a "loader," loading elements of batteries into boxes. Her job involved repetitive lifting, turning, twisting, reaching, bending, and standing.

In 1998, Ms. Evans had pain, swelling, and numbness in bother upper extremities. Johnson Controls' doctor diagnosed her with overuse syndrome. Dr. David T. Sowa, an orthopedic surgeon, also treated her at that time and reported that her "job activities were causing neck pain, neck muscular spasm, and cervical nerve root irritation."[2]

On December 5, 2006, while Ms. Evans was loading an element into a box, she felt pain in her right hand up through her elbow and her hand began to swell. She subsequently treated with Dr. Nicholas O. Biasotto, a family practitioner, who referred her to Dr. Sowa. She returned to light-duty work

[2] Tr. Sowa, at 9.

in January 2007, but a few weeks later she was placed on short-term disability.

On January 31, 2007, Ms. Evans was in a motor vehicle accident and sustained injury to her ribs. She returned to work as a loader on March 12, 2007 and was subsequently was placed on total disability on May 10, 2007. Dr. Biasotto referred Ms. Evans to Dr. Bikash Bose, a neurosurgeon. Dr. Bose performed neck surgery on Ms. Evans in July 2007.

In January 2008, Ms. Evans filed an initial petition to determine compensation due. At the hearing before the Board, Dr. Biasotto, Dr. Sowa, and Dr. Bose, all testified on behalf of Ms. Evans that her injury was "causally related to a cumulative detrimental effect from her repetitive activity at work."[3] Dr. Ger testified on behalf of Johnson Controls that her injury was a pre-existing condition.

The Board accepted the opinions of Dr. Biasotto, Dr. Sowa, and Dr. Bose, and therefore found that Ms. Evans' injury was causally related and granted her petition for compensation due.[4] This is Johnson Controls' appeal from that decision.

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[3] *Evans v. Johnson Controls, Inc.*, IAB Hearing No. 1298806, at 16 (Aug. 29, 2008).
[4] *Id*. at 15.

II. STANDARD OF REVIEW

The Supreme Court and this Court have repeatedly emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, the appellate court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.[5] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[6] The reviewing court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[7] When factual determinations are at issue, the reviewing Court should defer to the experience and specialized competence of the Board.[8]

III. DISCUSSION

In order to be compensable, medical expenses must be reasonable, necessary, and causally related to a work accident.[9] Johnson Controls does not dispute that Ms. Evans treatment was reasonable and necessary, however it contends that her injury was pre-existing and not causally related to work.

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[5] *Opportunity Center, Inc. v. Jamison,* 2007 WL 3262211, *2 (Del. Supr.).
[6] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del.1994).
[7] *Johnson v. Chrysler Corp.*, 213 A.2d 64 (Del. 1965).
[8] 29 *Del. C.* § 10142(d).
[9] *Rash v. DHHCI*, 2007 WL 2823331, at *3 (Del. Super.).

The relevant standard for determining causation, which the Board applied, is the "but for" definition of proximate cause, as used in tort law.[10] The triggering event "need not be the sole cause or even a substantial cause of the injury. If the accident provides the 'setting' or 'trigger,' causation is satisfied for purposes of compensability."[11] Moreover, whether medical expenses are causally related to an industrial accident is "purely [a] factual issue within the purview of the Board."[12] The limited role of this Court is to determine whether substantial evidence supports the Board's decision that Claimant's injuries were causally related to work-related conditions.

It is clear from a review of the evidence in this case, which must be viewed in a light most favorable to the prevailing party below, that the Board's decision was supported by substantial evidence. Ms. Evans' three treating physicians all opined that her neck injury was "causally related to a cumulative detrimental effect from her repetitive activity at work."[13] The Board was not persuaded by Dr. Ger's opinion that her neck injury was a pre-existing condition. Dr. Ger testified that Ms. Evans' work activities involved a repetitive motion of her hands and that therefore there could be no cumulative detrimental effect to her neck. However, the Board noted that

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[10] *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1998).
[11] *Id.*
[12] *Bullock v. K-Mart Corp.*, 1995 WL 339025 (Del. Super.).
[13] *Evans*, IAB Hearing No. 1298806, at 16.

"Claimant worked ten to twelve hours per day in a job that involved repetitive lifting, turning, twisting, reaching, bending, and standing. Based on the evidence including Claimant's demonstration of how she performed her job, such activities clearly involve the neck despite Dr. Ger's testimony."[14]

Johnson Controls alleges that the Board committed legal error by accepting the opinions of Dr. Biasotto, Dr. Sowa, and Dr. Bose because those opinions were "disparate." A review of the record, however, does not support this assertion. Moreover, as Johnson Controls concedes, the Board is free to accept or reject expert testimony in whole or in part.[15] The Board decision clearly summarizes the opinions of each expert and explained why it accepted the ultimate conclusion of the three treating physicians over that of Dr. Ger. It is solely within the function of Board, not this Court, to weigh the credibility of witnesses and resolve conflicting testimony. As such, the Board did not commit legal error by accepting the opinions of Dr. Biasotto, Dr. Sowa, and Dr. Bose over that of Dr. Ger.[16]

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[14] *Id.*
[15] *Lewis v. Formosa Plastics Corp.*, 1999 WL 743322, at *3 (Del. Super.) (stating that "in weighing the testimony of physicians that testify at a Board hearing, it has 'never been construed as an "all or nothing" rule'").
[16] *DiSabatino v. Wortman*, 453 A.2d 102, 105 (Del. 1982) (holding that the Board is free to accept the testimony of one medical expert over that of another).

This Court will not re-determine questions of credibility or make its own factual findings. Therefore, viewing the evidence in a light most favorable to Ms. Evans, there was sufficient evidence from which the Board could conclude that Ms. Evan's injury was "causally related to a cumulative detrimental effect resulting from performing her job responsibilities."[17]

IV. CONCLUSION

For the reasons stated above, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

oc: Prothonotary

[17] *Evans*, IAB Hearing No. 1298806, at 15.